



FEDERAL ELECTION COMMISSION  
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December 11, 2002

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

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**SUBJECT:** Draft Final Rules and Explanation and Justification on Bipartisan Campaign Reform Act of 2002 Reporting

**AGENDA ITEM**  
For Meeting of: 12-12-02  
**SUBMITTED LATE**

On October 21, 2002, the Commission published a notice of proposed rulemaking (NPRM) entitled "Bipartisan Campaign Reform Act of 2002 Reporting." That NPRM proposed rules to implement new reporting requirements in the Bipartisan Campaign Reform Act of 2002 regarding electioneering communications, independent expenditures, party office buildings and reporting schedules for certain reporting entities. See 67 Fed. Reg. 64,555 (Oct. 21, 2002). After reviewing the written comments and discussion with the Regulations Committee, the Office of the General Counsel has prepared for Commission consideration the attached draft Final Rules and Explanation and Justification.

**Recommendation**

The Office of General Counsel recommends that the Commission approve the attached Final Rules and Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

**Attachment**

Draft Final Rules and Explanation and Justification

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 104, 105, 108 and 109**

3 **[Notice 2002 - >>]**

4 **Bipartisan Campaign Reform Act of 2002 Reporting**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final rules and transmittal of regulations to Congress.

7 **SUMMARY:** The Federal Election Commission is promulgating new and revised rules  
8 regarding the reporting of electioneering communications and independent  
9 expenditures, monthly reporting by national political party committees and  
10 quarterly reporting by the principal campaign committees of candidates  
11 for the House of Representatives and Senate, as well as reporting related  
12 to party committee building funds. These rules implement several  
13 provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA")  
14 that amend the Federal Election Campaign Act of 1971, as amended  
15 ("FECA" or "the Act"). Further information is provided in the  
16 Supplementary Information that follows.

17 **EFFECTIVE**

18 **DATE:** [Insert date 30 days after date of publication in the Federal Register.]

19 **FOR FURTHER**  
20 **INFORMATION**

21 **CONTACT:** Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, Ms. Mai  
22 T. Dinh, Acting Assistant General Counsel, or Ms. Cheryl A. F. Hemsley,  
23 Attorney, 999 E Street, N.W., Washington, D.C., 20463, (202) 694-1650  
24 or (800) 424-9530.

1 **SUPPLEMENTARY**

2 **INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-  
3 155, 116 Stat. 81 (2002), contains extensive and detailed amendments to the Federal Election  
4 Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. This is one in a series of rulemakings  
5 the Commission is undertaking to implement the provisions of BCRA. The deadline for the  
6 promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

7 Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional  
8 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the  
9 Speaker of the House of Representatives and the President of the Senate and publish them in the  
10 Federal Register at least 30 calendar days before they take effect. The final rules on BCRA  
11 Reporting were transmitted to Congress on December >>, 2002.

12  
13 **Introduction**

14 These final rules address: (1) reporting of electioneering communications; (2) reporting  
15 of independent expenditures; (3) quarterly reporting by the principal campaign committees of  
16 candidates for the House of Representatives and the Senate; (4) monthly reporting by political  
17 party committees; and (5) the reporting of funds for political party committee office buildings.  
18 See 2 U.S.C. 434(a), (e), (f) and (g); BCRA sec. 103, 201, 212, 501 and 503, 116 Stat. at 87-90,  
19 93-94, and 114-115.

20 The Commission issued a Notice of Proposed Rulemaking ("NPRM") addressing many  
21 of BCRA's reporting requirements. See 67 FR 64,555 (Oct. 21, 2002) ("Reporting NPRM").  
22 The Commission also previously sought comments on two of these topics in Notices of Proposed  
23 Rulemakings on Electioneering Communications, 67 FR 51,131 (Aug. 7, 2002), and Coordinated  
24 and Independent Expenditures, 67 FR 60,042 (Sept. 24, 2002). The Commission based the rules

1 for another topic, the reporting of funds for the purchase or construction of party office  
2 buildings, on recently published final rules. See Prohibited and Excessive Contributions: Non-  
3 Federal Funds or Soft Money; Final Rules, 67 FR 49,123 (July 29, 2002).

4 The Commission received four comments on this rulemaking. In addition, comments  
5 responding to the reporting issues in the previous NPRMs regarding electioneering  
6 communications and independent expenditures were considered by the Commission in  
7 developing these final reporting rules and are discussed in more detail below. The Commission  
8 received fifteen comments on electioneering communications reporting and two comments on  
9 coordinated and independent expenditures reporting. In addition, the Commission received  
10 testimony during the public hearings on electioneering communications on August 28 and 29,  
11 2002, and on coordinated and independent expenditures on October 23 and 24, 2002.

12 The Commission also recently issued a Statement of Policy, explaining that during the  
13 transition period following BCRA's effective date, the Commission intends to refrain from  
14 pursuing reporting entities for violations of the reporting requirements if they comply with  
15 Interim Reporting Procedures, which are specified in the Statement of Policy. FEC Policy  
16 Statement: Interim Reporting Procedures, 67 FR 71,075 (Nov. 29, 2002). All comments  
17 received, hearing transcripts, NPRMs, Final Rules, and the Statement of Policy are on the  
18 Commission's website at [www.fec.gov](http://www.fec.gov). The development of new reporting forms and  
19 instructions is underway, and the new materials will be posted on the Commission's website as  
20 they are completed. The Commission intends to have the new forms and instructions completed  
21 for reports due March 20, 2003, covering February 2003.

22 BCRA requires the Commission to promulgate standards for reporting computer software  
23 and also imposes certain other requirements on the Commission and on various persons who file

1 reports with the Commission, which will take effect when that computer software becomes  
2 available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting,  
3 which is the subject of these final rules, the Commission does not propose to address computer  
4 software standards in these final rules. The computer software standards need to be developed in  
5 conjunction with revisions to the Commission's reporting forms. Therefore, the Commission  
6 proposes to address computer software standards as soon as possible and will solicit public  
7 comments on the software standards at that time.

8

9 **Explanation and Justification**

10 **11 CFR 100.19 File, filed, or filing (2 U.S.C. 434(a))**

11 The Commission's regulations at 11 CFR 100.19 define file, filed, and filing. The  
12 Commission proposed revisions in the NPRM to section 100.19 to redefine when 24-hour reports  
13 of independent expenditures would be considered filed and when the new 48-hour reports of  
14 independent expenditures and 24-hour reports of electioneering communications would be  
15 considered filed. The Commission received no comments on these proposed rules. The final  
16 rules are substantially similar to the proposed rules in the NPRM, with the changes noted below.  
17 The Commission notes that the paragraphs in 11 CFR 100.19 should be read together, and the  
18 entire section should be reviewed for applicable requirements.

19 Paragraph (a) of section 100.19 is unaffected by this rulemaking, except for a new  
20 heading. It retains the pre-BCRA general rule that a document is considered timely filed if it is  
21 delivered to the appropriate filing office (either the Commission or the Secretary of the Senate)  
22 by the close of business on the prescribed filing date. Paragraph (b) of section 100.19 retains the  
23 pre-BCRA rule that a document is also considered timely filed if it is sent by registered or

1 certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time on the prescribed  
2 filing date – except for pre-election reports. Pre-election reports must be filed no later than the  
3 12<sup>th</sup> day before the relevant election or posted by registered or certified mail no later than the 15<sup>th</sup>  
4 day before the relevant election. See, e.g., 2 U.S.C. 434(a)(2)(A)(i). The references to midnight  
5 in paragraph (b) are being changed to 11:59 PM Eastern Standard/Daylight Time, whichever is  
6 applicable, consistent with paragraphs (c), (d), and (f) of this section. The revisions to paragraph  
7 (b) of section 100.19 clarify that paragraph (b) does not apply to reports addressed by paragraph  
8 (c) through new paragraph (f). The proposed new subtitle for paragraph (b) of “general rule” is  
9 not included in the final rules because paragraphs (a) and (b) of section 100.19 could both be  
10 considered part of the general rule.

11 Those exceptions are as follows: Paragraph (c) for electronic filing – “filed” means  
12 received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the  
13 filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures – “filed”  
14 means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day  
15 following (24-hour reports) or the second day following (48-hour reports) the date on which the  
16 spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour  
17 notices of last-minute contributions – “filed” means received by the Commission or the Secretary  
18 of the Senate within 48 hours of the receipt of a “last-minute” contribution of \$1,000 or more,  
19 which can be accomplished by using a facsimile transmission or the Commission’s website;  
20 paragraph (f) for 24-hour statements of electioneering communications – “filed” means received  
21 by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the  
22 disclosure date. See 11 CFR 104.20.

1 Paragraphs (c) and (e) of section 100.19 remain substantially unchanged, except for new  
2 headings.

3 Revised paragraph (d) of section 100.19 requires that both the new 48-hour reports of  
4 independent expenditures and the 24-hour reports of independent expenditures must be received  
5 by the Commission by the filing deadline. 2 U.S.C. 434(g)(4). Because the reasons behind the  
6 filing requirements for 24-hour reports apply equally to the essentially similar 48-hour reports,  
7 the final rules treat 48-hour reports the same as 24-hour reports with regard to permissible means  
8 of filing. The 24-hour and 48-hour reporting provisions allow reporting entities to submit their  
9 reports using facsimile machines or electronic mail, as long as they are not required under 11  
10 CFR 104.18 to file electronically. Paragraph (d)(3) has also been revised since the NPRM to  
11 state that the Commission's website may be used to file 24-hour and 48-hour reports of  
12 independent expenditures. Use of the Commission's website, facsimile machines or electronic  
13 mail for such purposes or for electioneering communication statements under section 100.19(f),  
14 discussed below, does not constitute electronic filing under 11 CFR 104.18, so such use will not  
15 constitute mandatory or voluntary electronic filing under 11 CFR 104.18(a) or (b). Sending 24-  
16 hour reports by mail is not a viable option because it is unlikely these reports will be received by  
17 the Commission within 24 hours of the independent expenditures. See Independent Expenditure  
18 Reporting; Final Rules, 67 FR 12,834, at 12,835 (Mar. 20, 2002).

19 New paragraph (f) of section 100.19 addresses electioneering communications, which  
20 must be reported within 24 hours of the "disclosure date." See 2 U.S.C. 434(f)(1) and 11 CFR  
21 104.20 below. The Commission is adding new paragraph (f) to 11 CFR 100.19 to require these  
22 24-hour statements be received by the Commission no later than 11:59 p.m. Eastern  
23 Standard/Daylight Time on the day following the disclosure date, rather than filed by that time.

1 To assist reporting entities with meeting this deadline, the final rule specifically allows filing by  
2 facsimile machine or electronic mail in addition to any other delivery method that accomplishes  
3 Commission receipt before the conclusion of the day following the disclosure date. For the same  
4 reasons that are discussed with regard to paragraph (d) of 11 CFR 100.19, new paragraph (f)  
5 follows the timing and filing methods of 24-hour and 48-hour reports for independent  
6 expenditures.

7 **11 CFR 104.3(g) – Funds for party office buildings**

8 Before BCRA, the Act and Commission regulations provided an exception to the  
9 definition of contribution for donations to a national or State party committee that were  
10 specifically designated to defray any cost incurred for the construction or purchase of its office  
11 facility. Pre-BCRA 2 U.S.C 431(8)(B)(viii); pre-BCRA 11 CFR 100.7(b)(12); 11 CFR 100.84.  
12 This exception is reflected in previous 11 CFR 104.3(g), which provided that funds or anything  
13 of value that were given to defray the costs of a party office facility and received by a political  
14 party committee must be reported as memo entries on Schedule A.

15 BCRA repealed the building fund exception to the definition of contribution for national  
16 party committees. BCRA, sec. 103(b)(1)(A), 116 Stat. at 87. Subsequent technical amendments  
17 at 2 U.S.C. 453(b) permit State and local political party committees to purchase or construct  
18 State and local party office buildings with non-Federal funds, subject to State law. BCRA, sec.  
19 103(b)(2), 116 Stat. at 87-88. To implement these provisions of BCRA, the Commission  
20 promulgated new regulations at 11 CFR 300.12(b)(3) and (d), which eliminate this former  
21 exception for national party committees, and at 11 CFR 300.35, which provides that the source  
22 and reporting of donations used for the costs incurred by a State or local party committee for the  
23 purchase or construction of its office building are subject to State law if donated to a non-Federal

1 account of the party committee. Prohibited and Excessive Contributions: Non-Federal Funds or  
2 Soft Money; Final Rule, 67 FR 49,064, at 49,123 and 49,127 (July 29, 2002). However, if funds  
3 or things of value are contributed to or used by the Federal account of a State or local party  
4 committee for the purchase or construction of its office building, then these amounts or items are  
5 contributions under the Act. Consequently, new paragraph (g)(1) of 11 CFR 104.3 makes it clear  
6 that any funds or things of value received by a Federal account and used for the purchase or  
7 construction of an office building, regardless of contributor-specified purposes, are contributions  
8 and are not treated differently from other funds or things of value received by a Federal account.  
9 New paragraph (g)(2) states that gifts, subscriptions, loans, advances, deposits of money, or  
10 anything of value donated to a non-Federal account of a State or local party committee that are  
11 used for the purchase or construction of its office building are not contributions subject to the  
12 reporting requirements of FECA, but are subject to applicable State law reporting requirements.  
13 New paragraph (g)(3) specifies that national party committees' receipts used to defray the costs  
14 of the construction or purchase of its office building are contributions subject to paragraph  
15 (g)(1). Thus, the memo entries required under previous 11 CFR 104.3(g) are no longer  
16 appropriate. New section 104.3(g) should be read in conjunction with 11 CFR 300.12(b)(3) and  
17 (d), 300.13, and 300.35. The Commission received no comments on this section.

18 **11 CFR 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d) and**  
19 **(g))**

20 1. Introduction

21 Prior to BCRA, the Commission had established reporting requirements for political  
22 committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See  
23 pre-BCRA 11 CFR 104.4. In the NPRM, the Commission proposed to revise the rules for

1 political committees reporting independent expenditures made less than 20 days but more than  
2 24 hours before an election and proposed to add new rules regarding the 48-hour reports of  
3 independent expenditures during the rest of the calendar year to implement BCRA's new  
4 reporting requirements for such independent expenditures. See 2 U.S.C. 434g.

5 The Commission received one comment on this section in the Reporting NPRM and one,  
6 from the same commenter, when these rules were published for comment in the Coordinated and  
7 Independent Expenditures NPRM, 67 FR 60,042 (Sept. 25, 2002). The commenter agreed with  
8 the proposal that 24-hour and 48-hour reports of independent expenditures need not be filed until  
9 the communications are publicly distributed or otherwise publicly disseminated. With the  
10 exception of certain clarifying changes suggested by the commenter, the final rules mirror those  
11 proposed in the NPRM.

12 2. 11 CFR 104.4(a) Regularly scheduled reporting

13 Paragraph (a) of section 104.4 is unaffected, other than the addition of a new heading,  
14 minor clarifications, a grammatical correction, and an updated cross-reference.

15 3. 11 CFR 104.4(b) Reports of independent expenditures made at any time up to and  
16 including the 20<sup>th</sup> day before an election

17 New paragraph (b) addresses reports of independent expenditures made by a political  
18 committee at any point in the campaign up to and including the 20<sup>th</sup> day before an election.

19 A. 11 CFR 104.4(b)(1) Independent expenditures aggregating less than \$10,000

20 New paragraph (b)(1) addresses independent expenditures aggregating less than \$10,000  
21 with respect to a given election during the calendar year, up to and including the 20th day before  
22 an election. This calendar-year aggregation is based on 2 U.S.C. 434(b)(4), which requires  
23 calendar-year aggregation for reports of independent expenditures by political committees.

1 Under the new rule, political committees must report the independent expenditures on Schedule  
2 E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The  
3 Commission interprets 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation  
4 toward the various thresholds for independent expenditure reporting to be calculated on a per-  
5 election basis within the calendar year. For example, if a political committee makes \$5,000 in  
6 independent expenditures with respect to a Senate candidate, and \$5,000 in independent  
7 expenditures with respect to a House of Representatives candidate, and both of these ads are  
8 publicly distributed before the 20th day before the primary election, that political committee is  
9 not required to file 48-hour reports, but must disclose the independent expenditures on its  
10 regularly scheduled reports. If the political committee makes \$5,000 in independent  
11 expenditures with respect to a clearly identified candidate in the primary, and an additional  
12 \$5,000 in independent expenditures with respect to the same candidate in the general election but  
13 outside the 20-day window, no 48-hour reports are required; but again the political committee  
14 must disclose the independent expenditures on its regularly scheduled reports. If, however, the  
15 political committee made \$6,000 in independent expenditures supporting a Senate candidate in  
16 the primary election, and \$4,000 in independent expenditures opposing that Senate candidate's  
17 opponent in the primary, and these communications are published in a newspaper more than  
18 twenty days before the primary, the political committee must file a 48-hour report. The  
19 Commission received no comments on the interpretation implemented by this paragraph.

20 B. 11 CFR 104.4(b)(2) Independent expenditures aggregating \$10,000 or more

21 New paragraph (b)(2) addresses independent expenditures aggregating \$10,000 or more  
22 during the calendar year up to and including the 20th day before an election. Political  
23 committees must file these reports on Schedule E of FEC Form 3X. These reports must be

1 received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the  
2 second day following the date on which a communication that constitutes an independent  
3 expenditure is publicly distributed or otherwise publicly disseminated. Further, political  
4 committees must file an additional 48-hour report each time subsequent independent  
5 expenditures reach or exceed the \$10,000 threshold with respect to the same election to which  
6 the first report related.

7 4. 11 CFR 104.4(c) Reports of independent expenditures made less than 20 days, but more  
8 than 24 hours before the day of an election

9 Revisions to renumbered paragraph (c) (which was pre-BCRA 11 CFR 104.4(b)) state  
10 that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern  
11 Standard/Daylight Time on the day following the date on which the \$1,000 threshold is reached  
12 during the final 20 days before the election. Further, revisions to this paragraph also indicate that  
13 additional 24-hour reports must be filed each time during the 24-hour reporting period in which  
14 subsequent independent expenditures reach or exceed the \$1,000 threshold with respect to the  
15 same election to which the previous report related.

16 5. 11 CFR 104.4(d) Verification

17 New paragraph (d) contains the report verification information previously found in pre-  
18 BCRA paragraph (b) of section 104.4. There are non-substantive grammatical changes to  
19 conform this paragraph to the rest of section 104.4.

20 6. 11 CFR 104.4(e) Where to file

21 New paragraph (e) largely restates pre-BCRA paragraph (c) of section 104.4. However,  
22 this paragraph has been reorganized since it was published in the Reporting NPRM. In the  
23 Reporting NPRM, paragraph (e)(2) would have addressed independent expenditures related to

1 both Senate and House of Representatives candidates, and it would have omitted reference to the  
2 Secretary of Senate. In the final rule, paragraph (e)(2) addresses independent expenditures  
3 related to Senate candidates, and it retains the former requirement in 11 CFR 104.4(c) that  
4 regularly scheduled reports of independent expenditures related to Senate candidates must be  
5 filed with the Secretary of Senate. 11 CFR 104.4(e)(2)(i). However, with respect to 24-hour and  
6 48-hour reports of independent expenditures relating to Senate candidates under BCRA, the  
7 Commission and not the Secretary of the Senate is the place of filing. 11 CFR 104.4(e)(2)(ii);  
8 see 2 U.S.C. 434(g)(3); see also the discussion of 11 CFR 105.2, below.

9 Proposed paragraph (e)(3) in the Reporting NPRM is being renumbered paragraph (e)(4),  
10 and it provides that if a State has obtained a waiver under 11 CFR 108.1(b), then reports of  
11 independent expenditures are not required to be filed with that State's Secretary of State.

12 7. 11 CFR 104.4(f) Aggregating independent expenditures for reporting purposes

13 Paragraph (f) of 11 CFR 104.4 addresses aggregation of independent expenditures for  
14 reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) are being moved to this  
15 section and revised to explain when and how political committees and other persons making  
16 independent expenditures must aggregate independent expenditures for purposes of determining  
17 whether 48-hour and 24-hour reports must be filed. Note that this aggregation rule applies to  
18 independent expenditures by political committees, as well as other persons; new 11 CFR  
19 109.10(c) and (d) cross-reference this paragraph. Paragraph (f) establishes that every date on  
20 which a communication that constitutes an independent expenditure is "publicly distributed" or  
21 otherwise publicly disseminated serves as the date used to determine whether the total amount of  
22 independent expenditures has, in the aggregate, reached or exceeded the threshold reporting  
23 amounts (\$1,000 for 24-hour reports or \$10,000 for 48-hour reports). The term "publicly

1 distributed” has the same meaning as provided in new 11 CFR 100.29(b)(3), which the  
2 Commission promulgated as part of the electioneering communications rulemaking.  
3 Electioneering Communications Final Rules, 67 FR 65,190, 65,192, 65,211 (Oct. 23, 2002). The  
4 term “publicly disseminated” refers to communications that are made public via other media,  
5 e.g., newspaper, magazines, handbills. Thus, paragraph (f) sets the same date as the starting date  
6 from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour  
7 report of independent expenditures.

8 Congress changed the reporting requirements for independent expenditures by adding the  
9 phrase “or contracts to make” in 2 U.S.C. 434(g)(1) and (2). By doing so, BCRA ties 24-hour  
10 and 48-hour reporting of independent expenditures to the time when a person “makes or  
11 contracts to make independent expenditures” aggregating at or above the \$1,000 and \$10,000  
12 thresholds, respectively. Therefore, under new 11 CFR 104.4(f), each person must include in the  
13 calculation of the aggregate amount of independent expenditures, both disbursements for  
14 independent expenditures and all contracts obligating funds for disbursements for independent  
15 expenditures. Under this new rule and the timing requirements described above, when a  
16 communication that constitutes an independent expenditure is publicly distributed or publicly  
17 disseminated, the person who paid for, or who contracted to pay for, the communication is able  
18 to determine whether the communication satisfies the “express advocacy” requirement of the  
19 definition of an independent expenditure (see 11 CFR 100.16) and therefore must determine  
20 whether the disbursement for that communication constitutes an independent expenditure. A  
21 person reaching or exceeding the applicable reporting threshold is required to submit a report by  
22 11:59 p.m. Eastern Standard/Daylight Time on the day after, for 24-hour reporting, or two days  
23 after, for 48-hour reporting, the date of the public distribution or public dissemination of that

1 communication. Please note that under these rules, independent expenditures must be reported  
2 by political committees after a disbursement is made, or a debt reportable under 11 CFR  
3 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. on the day  
4 following the date on which the independent expenditure is first publicly distributed or otherwise  
5 publicly disseminated.

6 In some situations, a political committee does not make a payment or incur a reportable  
7 debt before the communication that constitutes the independent expenditure is publicly  
8 distributed or otherwise publicly disseminated. If the communication is both publicly distributed  
9 or otherwise publicly disseminated and paid for in the same reporting period, then the political  
10 committee must report the independent expenditure on Schedule E for that reporting period. If  
11 the communication is aired in one reporting period (e.g., during August for a monthly filer) and  
12 payment is made in a later reporting period (e.g., during September), then the political committee  
13 must report the independent expenditure as a memo entry on Schedule E on its August report if  
14 the \$10,000 threshold has been exceeded and on Schedule D if it is a reportable debt under  
15 11 CFR 104.11. The September report should show a payment on Schedule E and the same  
16 payment on Schedule D, if applicable.

17 In other situations, however, a political committee may pay the production and  
18 distribution costs associated with an independent expenditure in one reporting period, but not  
19 publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case,  
20 the political committee must report the payment as a disbursement on Schedule B for operating  
21 expenditures. When, in a subsequent reporting period, the communication is publicly distributed  
22 or otherwise publicly disseminated, the political committee must file a Schedule E for the  
23 independent expenditure referencing the earlier Schedule B transaction. The political committee

1 must also report the disbursement for the independent expenditure as a negative entry on  
2 Schedule B so the total disbursements are not inflated. Alternatively, if the political committee  
3 wishes to disclose the independent expenditure before the communication is publicly  
4 disseminated, it could report the independent expenditure on Schedule E for the reporting period  
5 in which the disbursement is made, with no further reporting obligation except for the 48-hour  
6 report if the total amount of disbursements for independent expenditures equals or exceeds  
7 \$10,000 on the day the communication is publicly distributed or otherwise publicly  
8 disseminated.

9       Obligations incurred, but not yet paid that are reportable debts, must be reported on  
10 Schedule D. For independent expenditures once the \$10,000 threshold is exceeded, political  
11 committees must also report memo entries on Schedule E. When, in a subsequent reporting  
12 period, the communication is publicly distributed or otherwise publicly disseminated, the  
13 political committee must file a Schedule E referencing the debt on Schedule D. The political  
14 committee must continue to report the debt on Schedule D and any payment on the debt on  
15 Schedules D and E, until the debt is extinguished.

16       The Commission received one comment supporting this proposal to base reporting of  
17 independent expenditures on the date of public distribution or public dissemination, rather than  
18 on the date a contract is executed. The policy reasons for adopting this reading of BCRA are the  
19 same as those set forth in the Explanation and Justification below for the reporting of  
20 electioneering communications.

#### 21 8. Additional requirements in the Internal Revenue Code

22       The Commission received one comment from the Internal Revenue Service (“IRS”) on  
23 the coordinated and independent expenditure NPRM, which noted generally that even though

1 some entities that are political organizations within the meaning of section 527 of the Internal  
2 Revenue Code may not be obliged to report contributions or expenditures to the Commission,  
3 these entities may still be required to report to the IRS. The IRS offered the following  
4 explanation, which the Commission is including here to provide additional guidance regarding  
5 the potential overlap between the Internal Revenue Code and the Commission's regulations.  
6 Section 527(j) of the Internal Revenue Code requires the reporting on IRS Form 8872 of certain  
7 contributions received and expenditures made by a tax-exempt political organization unless (i)  
8 the organization reports under the FECA as a political committee; (ii) the organization is a State  
9 or local committee of a political party or political committee of a State or local candidate; (iii)  
10 the organization is a qualified State or local political organization within the meaning of section  
11 527(e)(5) of the Internal Revenue Code; (iv) the organization reasonably anticipates that it will  
12 not have gross receipts of \$25,000 or more for any taxable year; (v) the organization is otherwise  
13 exempt from Federal income taxation under section 501(a) of the Internal Revenue Code because  
14 it is described in section 501(c) of the Internal Revenue Code; or (vi) the expenditure made is  
15 treated as an independent expenditure under the FECA. In certain situations this could require a  
16 tax-exempt political organization making coordinated expenditures to report such expenditures  
17 on IRS Form 8872 even though that organization would not be required to report such items to  
18 the Commission. Moreover, a tax-exempt political organization that is required to report one or  
19 more independent expenditures to the Commission might also have to report certain  
20 contributions received and other expenditures to the IRS.

21 **11 CFR 104.5 Filing dates (2 U.S.C. 434(a)(2))**

22 Section 104.5 sets forth filing dates for all reporting entities, including political  
23 committees. The NPRM proposed revisions to the rules for 24-hour reports of independent

1 expenditures and proposed adding provisions for 24-hour reports of electioneering  
2 communications and 48-hour reports of independent expenditures. The final rules in section  
3 104.5 track the proposed rules, with the changes described below.

4 Section 104.5(a) is being revised to set forth the new reporting schedule for the principal  
5 campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the  
6 principal campaign committees of these candidates were allowed to file semi-annually in non-  
7 election years. After November 5, 2002, excluding reports for 2002 runoff elections, principal  
8 campaign committees of House of Representatives and Senate candidates must file quarterly  
9 reports in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Revised  
10 paragraphs (a) and (a)(1) of section 104.5 now state that these committees must file quarterly  
11 reports. Like other quarterly reports, these must be complete as of March 31, June 30,  
12 September 30, and December 31, and must be filed by April 15, July 15, October 15, and  
13 January 31 of the following year, respectively. Paragraph (a)(2) of 11 CFR 104.5 sets forth the  
14 requirements for pre-election and post-general election reports in the election year and is  
15 identical to paragraphs (a)(1)(i) and (ii) of pre-BCRA 11 CFR 104.5. The rules regarding semi-  
16 annual reporting from pre-BCRA section 104.5(a) are being deleted. Please note that these new  
17 reporting dates do not affect the principal campaign committees or other authorized committees  
18 of Presidential candidates.

19 Revisions to paragraph (c) state that while unauthorized political committees may choose  
20 to file quarterly or monthly, a national committee of a political party must report monthly under  
21 new 11 CFR 104.5(c)(4), which is discussed below. Consequently, national party committees  
22 are no longer permitted to change their filing frequency. Paragraphs (c) and (c)(4) have been

1 revised since the NPRM to consolidate the references to the national party committees, including  
2 the national congressional campaign committees.

3 Paragraph (c)(4) of 11 CFR 104.5 is a new provision implementing the BCRA  
4 requirement that all national political party committees must report on a monthly basis.  
5 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in  
6 the election year and semi-annually in the non-election years. Under the changes to the Act  
7 made by BCRA, national political party committees must file monthly, and must file pre-general  
8 election and post-general election reports. BCRA's changes to FECA in this regard may be  
9 intended to remove any doubt as to whether national political party committees that file quarterly  
10 must file these pre-election reports if they do not make any contributions or expenditures on  
11 behalf of candidates in these elections during pre-election reporting periods. These rules  
12 implement BCRA's amendment. No commenters addressed this topic.

13 The Commission sought, but received no comments on whether the national  
14 Congressional campaign committees of the political parties should be included in this new  
15 monthly filing requirement for national political party committees. The final rules require the  
16 Congressional campaign committees of national parties to file monthly for several reasons. First,  
17 Congressional campaign committees are treated as committees of a national political party  
18 elsewhere in the Act and the regulations. For example, 11 CFR 110.1 specifically includes the  
19 Congressional campaign committees as committees that are "established and maintained by a  
20 national political party." Further, the Supreme Court in FEC v. Democratic Senate Campaign  
21 Committee, 454 U.S. 27, 39 (1981), stated that the National Republican Senatorial Committee is  
22 part of the Republican Party organization. By analogy, the other Congressional campaign  
23 committees are also a part of their national party organizations. Moreover, the Commission

1 notes that BCRA included a committee of a national political party in this monthly filing  
2 requirement, rather than the committee of a national political party. The wording seems to  
3 foreclose the argument that Congress intended to include only the national committees of the  
4 political parties in the monthly filing requirement.

5 Paragraph (g) of 11 CFR 104.5 moves the pre-BCRA contents of paragraph (g) to new  
6 paragraph (g)(2) with revisions, and adds a new paragraph (g)(1), which requires that 48-hour  
7 reports of independent expenditures must be received by the Commission no later than 11:59  
8 p.m. Eastern Standard/Daylight Time on the second day following the date on which a  
9 communication is publicly distributed or otherwise publicly disseminated. The Commission  
10 received one comment on paragraph (g) of section 104.5, which urged the Commission to clarify  
11 that the filing requirements for subsequent reports of independent expenditures (24-hour and 48-  
12 hour reports) would be triggered by the public dissemination or distribution of the  
13 communication (as with the initial reports). Note that the term “publicly distributed” refers to  
14 communications distributed by radio or television (see 11 CFR 100.29(b)(3)) and the term  
15 “publicly disseminated” refers to communications that are made public via other media, e.g.,  
16 newspaper, magazines, handbills. New paragraph (g)(4) explains when communications that are  
17 mailed are considered to be “publicly distributed.”

18 New paragraph (j) of section 104.5 addresses the filing dates for electioneering  
19 communications. Specifically, it provides that the 24-hour statements must be received by the  
20 Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure  
21 date.

## 22 **11 CFR 104.19 [Reserved]**

23 Section 104.19 of 11 CFR is added and reserved for future use.

1 **11 CFR 104.20 – Reporting electioneering communications**

2 1. Introduction

3 In the Explanation and Justification for the Electioneering Communications Final Rules,  
4 the Commission stated it would revise the proposed rules on reporting electioneering  
5 communications and re-propose the rules as part of this rulemaking.<sup>1</sup> 67 FR at 65,209.

6 Consequently, the NPRM for this reporting rulemaking included the revised proposed rules for  
7 the reporting requirements for electioneering communications at proposed 11 CFR 104.20. The  
8 following explanation and justification for 11 CFR 104.20 discusses comments resulting from  
9 the Reporting NPRM and the Electioneering Communications NPRM. Although the  
10 Electioneering Communications NPRM would have designated the reporting of electioneering  
11 communications as section 104.19, the proposed rules in the Reporting NPRM designated  
12 reporting of electioneering communications as proposed section 104.20. In the following  
13 explanation and justification, citations to 104.19 refer to the original proposed rules in the  
14 Electioneering Communications NPRM, and citations to 104.20 refer to the proposed rules in the  
15 Reporting NPRM and the final rules.

16 2. 11 CFR 104.20(a) Definitions

17 New section 104.20(a) includes the definitions for the relevant terms that are used  
18 throughout new section 104.20. These terms are: (1) disclosure date; (2) direct costs of  
19 producing or airing electioneering communications; (3) sharing or exercising direction or  
20 control; (4) identification; and (5) publicly distributed.

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<sup>1</sup> The original proposed rules were part of the Electioneering Communications NPRM. See 67 FR at 51,145.

1           A. 11 CFR 104.20(a)(1) Definition of "Disclosure date"

2           BCRA requires persons who make electioneering communications that cost more than  
3 \$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date.  
4 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed section 104.19(b)  
5 would have defined "disclosure date" as "the first date by which a person has made one or more  
6 disbursements, or has executed one or more contracts to make disbursements, for the direct costs  
7 of producing or airing electioneering communications aggregating in excess of \$10,000." 67 FR  
8 at 51,145. The Electioneering Communications NPRM, however, also sought comment on  
9 whether the disclosure date should be the date on which the electioneering communication aired.  
10 Thus, under this proposal, an organization could make disbursements or enter into a contract to  
11 make disbursements that exceed \$10,000, but would not be required to disclose the  
12 disbursements or contract until the electioneering communication is aired. Although BCRA uses  
13 the term "airing," the Commission has determined that "publicly distributed" more accurately  
14 encompasses how electioneering communications are disseminated to the public, including the  
15 airing of these communications. See below for discussion of the definition of "publicly  
16 distributed."

17           All of the commenters who addressed this issue disagreed with the proposed rule in the  
18 Electioneering Communications NPRM and advocated adopting a final rule that would define  
19 "disclosure date" as the date of the public distribution of the electioneering communication.  
20 They argued that there is no electioneering communication, and therefore no reporting  
21 requirement, until the communication is actually publicly distributed.

22           Taking into consideration the comments described above, proposed section 104.20(a)(1)  
23 in the Reporting NPRM would have defined "disclosure date" as the date on which an

1 electioneering communication is publicly distributed where there have been disbursements, or  
2 executed contracts for disbursements, for the direct costs of producing or airing an electioneering  
3 communication aggregating in excess of \$10,000. The Commission received one comment on  
4 the revised proposed definition of “disclosure date” at section 104.20(a)(1), which supported this  
5 approach. The final rule in section 104.20(a)(1) is similar to the proposed rule. This date  
6 reflects the Commission’s concerns that there are legal and practical issues associated with  
7 compelling disclosure of potential electioneering communications before they are finalized and  
8 publicly distributed, and premature disclosure may require reporting entities to divulge  
9 confidential strategic and political information about their possible future activities.

10           Consequently, “disclosure date” means one of two things. First, under new section  
11 104.20(a)(1)(i), it means the first time in a calendar year that an electioneering communication is  
12 publicly distributed where the maker of the electioneering communications has also surpassed  
13 the \$10,000 disbursement threshold. Counting toward the threshold are disbursements during  
14 that calendar year for the direct costs of producing or airing either that communication or any  
15 other previously unreported electioneering communication during that calendar year. Thus, any  
16 disbursements for the direct costs of producing or airing the electioneering communication made  
17 in calendar years prior to the public distribution of the electioneering communication are not  
18 aggregated toward the \$10,000 threshold. Similarly, any costs already reported for earlier  
19 electioneering communications are not aggregated toward the \$10,000 threshold. After the first  
20 disclosure date, subsequent disclosure dates occur in the same calendar year in which an  
21 electioneering communication is publicly distributed, if that person has made additional  
22 disbursements for the direct costs of producing or airing an electioneering communication that,  
23 in the aggregate, exceed \$10,000. 11 CFR 104.20(a)(1)(ii). The following example illustrates

1 how the definition of “disclosure date” operates. From January to March of one year, Person X  
2 spends \$25,000 in direct costs to produce and air an electioneering communication, and the  
3 communication is publicly distributed on March 15. Thus, March 15 is the initial disclosure date  
4 under 11 CFR 104.20(a)(1)(i). Person X then pays another \$5000 to publicly distribute the same  
5 communication on April 1. April 1 is not a disclosure date because the subsequent disbursement  
6 does not exceed \$10,000. On April 15, Person X publicly distributes a different electioneering  
7 communication for which she spent \$7000 in direct costs to produce and air. April 15 is a  
8 disclosure date under 11 CFR 104.20(a)(1)(ii) because that is the date on which the  
9 communication was publicly distributed and the aggregation of the disbursements for the direct  
10 costs after the initial disclosure date (\$5000 plus \$7000) exceeds \$10,000.

11 B. 11 CFR 104.20(a)(2) Definition of “Direct costs of producing or airing electioneering  
12 communications”

13 In the Electioneering Communications NPRM, proposed section 104.19(a) would have  
14 required every person who makes a disbursement, or executes a contract, for the direct costs of  
15 producing or airing electioneering communications that aggregate in excess of \$10,000 during a  
16 calendar year, to file a statement with the Commission. Electioneering Communications NPRM,  
17 67 FR at 51,145-46. Furthermore, proposed section 104.19(a)(2) would have included a non-  
18 exhaustive list of what constitutes direct costs of electioneering communications. Id. The  
19 Commission sought comment on two issues relating to this proposed requirement. The first was  
20 whether the list in proposed section 104.19(a)(2) was adequate and whether the list should be  
21 exhaustive. The second issue was whether the direct costs of producing an electioneering  
22 communication and the direct costs of airing it should be aggregated separately or together to

1 determine whether such costs exceed \$10,000. The second issue is discussed in further detail in  
2 the explanation and justification for new section 104.20(b).

3 The commenters on the Electioneering Communications NPRM were split on the issue of  
4 whether the list of direct costs in proposed section 104.19(a)(2) should be exhaustive or non-  
5 exhaustive. One commenter who supported an exhaustive list argued that it is clear what is  
6 involved in producing a communication, and the proposed rule adequately addresses those costs.  
7 Another commenter recommended a non-exhaustive list so that the Commission could retain  
8 flexibility to identify other costs associated with producing and airing communications not listed  
9 in the proposed rules.

10 In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) in the  
11 Reporting NPRM included an exhaustive list of direct costs associated with producing or airing  
12 an electioneering communication. The Commission sought comments on whether the proposed  
13 definition should include any other direct costs associated with producing or airing  
14 electioneering communications. In particular, the Commission sought comment on what, if any,  
15 additional in-house production costs should be considered direct costs.

16 The final rule in new section 104.20(a)(2) is similar to the proposed rule in the Reporting  
17 NPRM, and defines “direct costs of producing or airing” with an exhaustive list. Paragraph  
18 (a)(2)(i) has been clarified to include “production costs charged by a vendor” to show that the  
19 nature of service, not the nature of the vendor providing the service, controls whether its cost  
20 should be included. (The NPRM version listed “costs charged by a production company,” which  
21 unduly focused on the type of company providing the service.) Paragraph (a)(2)(ii) has been  
22 added to include in-house production costs. The Commission understands “direct cost of  
23 producing or airing electioneering communications” as used in 2 U.S.C. 434(f)(4)(A) and (B) to

1 include all such costs and to not distinguish between those provided by vendors or those  
2 provided by in-house resources of personnel, equipment, and facilities. Paragraph (a)(2)(iii) has  
3 been renumbered from paragraph (a)(2)(ii) in the Reporting NPRM, but its contents have not  
4 changed.

5 One commenter addressed the issue of what should be included in an exhaustive list. The  
6 commenter supported an exhaustive list and agreed with the items on the list in proposed section  
7 104.20(a)(2). The commenter also suggested that the Commission make clear in the final rule  
8 that the definition does not “include planning or preparatory costs such as polling and focus  
9 groups, or in-house costs such as staff compensation and other overhead.”

10 Paragraph (a)(2)’s list of vendor production costs, in-house production costs, and airtime  
11 costs is exhaustive. Only costs that fit within these categories are included. Illustrative  
12 examples of production costs charged by a vendor are also included in the regulation, and these  
13 examples are not exhaustive. Paragraph (a)(2)(ii) makes clear that part of the costs addressed by  
14 the commenter, which are described as “in-house costs such as staff compensation and other  
15 overhead,” could be included in paragraph (a)(2)(ii). The other of the commenter’s examples of  
16 polling and focus groups are not production costs as they are too attenuated from the resulting  
17 communication to be considered “direct costs of producing or airing an electioneering  
18 communication” under 2 U.S.C. 434(f)(4).

19 The final rule requires statements of electioneering communications to be filed when the  
20 direct costs of producing or airing electioneering communications exceed \$10,000. In both the  
21 Reporting NPRM and the Electioneering Communications NPRM, the Commission sought  
22 comment on how to aggregate the direct costs of producing or airing an electioneering  
23 communication to determine whether the \$10,000 threshold has been exceeded. The

1 commenters on the Electioneering Communications NPRM disagreed on this issue. Some  
2 commenters argued that BCRA should be read to require that production costs should be  
3 aggregated separately for the airtime costs. Under this interpretation, if it costs a person \$7,000  
4 to produce the electioneering communication and \$7,000 to air it, the threshold is not met  
5 because neither the direct costs of producing or airing the electioneering communication  
6 exceeded \$10,000. In contrast, other commenters argued that BCRA mandates that the direct  
7 costs of producing and airing the electioneering communication be aggregated. Under this  
8 approach, the example above would result in the \$10,000 threshold being met because the direct  
9 costs of producing and airing are \$14,000.

10 The Commission has decided that it is appropriate to require that the costs of producing  
11 and the costs of airing be added together, rather than counted separately, to determine whether  
12 the threshold has been met. Thus, when the direct costs of producing or airing an electioneering  
13 communication exceed \$10,000 when combined, the person who makes the electioneering  
14 communication would be required to file a statement with the Commission when the  
15 electioneering communication is publicly distributed. Additionally, the Commission agrees with  
16 a commenter who noted that, as a practical matter, for most electioneering communications, the  
17 \$10,000 threshold will be exceeded, regardless of whether the production costs and the airing  
18 costs are aggregated separately or together.

19 C. 11 CFR 104.20(a)(3) Definition of "Sharing or exercising direction or control"

20 The Electioneering Communications NPRM included two proposed alternatives,  
21 identified as Alternative 4-A and Alternative 4-B, to implement the BCRA requirement to  
22 disclose "any person sharing or exercising direction or control over the activities" of the person  
23 making the disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many

1 of the commenters asserted that both alternatives were vague and could encompass a large  
2 number of people, especially for electioneering communications made by membership  
3 organizations. Some of the commenters were also concerned that disclosing this information  
4 may reveal sensitive or confidential information and the decision-making processes of  
5 organizations, especially non-profit organizations, thereby placing them at a competitive  
6 disadvantage. For these reasons, these commenters argued that the Commission should require  
7 limited, if any, disclosure of persons who share or exercise direction or control over the person  
8 who makes disbursements for electioneering communications or the activities involved in  
9 making electioneering communications.

10 In contrast, several commenters, including the Congressional sponsors of BCRA,  
11 disagreed with both alternatives because in their view neither would disclose sufficiently the  
12 information required by BCRA. See 2 U.S.C. 434(f)(2)(A). They asserted that BCRA requires  
13 disclosure of not only those who have direction or control over the electioneering  
14 communications, but also those who have direction or control over the organization that makes  
15 the electioneering communications.

16 While the Commission recognizes the concerns of those who objected to disclosure of the  
17 decision-making process of their organizations, BCRA requires persons who make  
18 electioneering communications to disclose those who share or exercise direction or control over  
19 the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A).  
20 Because neither Alternative 4-A nor Alternative 4-B in the Electioneering Communications  
21 NPRM appeared to encompass the disclosure required by BCRA, proposed section 104.20(c)(2)  
22 in the Reporting NPRM did not incorporate either of the two alternatives. Instead, proposed  
23 paragraph (c)(2) followed the wording of 2 U.S.C. 434(f)(2)(A).

1 To provide further guidance on proposed section 104.20(c)(2), the proposed rules  
2 included a definition of “sharing or exercising direction or control.” Because it appears that the  
3 term “direction or control” in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-  
4 making process of an organization, including a qualified nonprofit corporation (“QNC”),  
5 proposed section 104.20(a)(3) would have defined “sharing or exercising direction or control” to  
6 mean exercising authority or responsibility for policy formulation, day-to-day management,  
7 obligation of funds, or hiring or firing employees.

8 The Commission also sought comment on an alternative definition of “sharing or  
9 exercising direction or control” that was not in the proposed rule. Reporting NPRM, 67 FR at  
10 64,560. Under this alternative definition, the term would mean the officers, directors, partners,  
11 or any other individuals who have the authority to bind the organization, entity, or person  
12 making the disbursement for electioneering communication. With this alternative the  
13 Commission sought a more objective, bright-line definition of “direction or control” that focused  
14 the definition on those persons who have the authority to act on behalf of the organization. One  
15 commenter addressed this issue. The commenter supported the alternative definition arguing  
16 that proposed section 104.20(a)(3) was overly broad and that the alternative definition better  
17 captured the requirements of BCRA. The commenter also suggested that the alternative  
18 definition be further narrowed to include only officers, directors, and partners.

19 The Commission is adopting the language in proposed section 104.19(a)(3), with two  
20 clarifications described below, as new section 104.20(a)(3) because it properly encompasses  
21 BCRA’s clear requirement to identify persons who exercise direction or control over the person  
22 making the electioneering communication. The bright-line alternative definition is being  
23 rejected because there are situations where it would be under-inclusive and would provide an

1 avenue for circumvention of important reporting obligations if key decision-makers are not given  
2 particular, official titles, such as “director.” The commenter’s suggestion to limit the definition  
3 to officers, directors, and partners would further exacerbate this potential problem. The  
4 clarifications to the proposed section 104.19(a)(3) are to change “day-to-day management” in  
5 paragraph (a)(3)(ii) to “general management” in an effort to focus the requirement on  
6 management of the overall organization or corporation, rather than routine or isolated  
7 administrative matters that might be captured by the term “day-to-day management.” Paragraph  
8 (a)(3)(iv)’s reference to “employees” has been broadened to “persons” to capture relationships  
9 other than employment, like consultant or independent contractor, and also limited to persons  
10 “involved in making electioneering communications.” Thus, the Commission believes that the  
11 functions described in new section 104.20(a)(3) provide sufficient scope to capture responsible  
12 persons and entities without sweeping too broadly.

13 D. 11 CFR 104.20(a)(4) Definition of “Identification”

14 New section 104.20(a)(4) incorporates the definition of the term “identification” in 11  
15 CFR 100.12. This definition is identical to the proposed definition. No commenter discussed  
16 this definition.

17 E. 101 CFR 104.20(a)(5) Definition of “Publicly distributed”

18 In the Electioneering Communications Final Rules, the Commission defines “publicly  
19 distributed” to mean “aired, broadcast, cablecast, or otherwise disseminated through the facilities  
20 of a television station, radio station, cable television system, or satellite system.” 11 CFR  
21 100.29(b)(6). Therefore, new section 104.20(a)(5) adopts the definition of “publicly distributed”  
22 in 11 CFR 100.29(b)(6). The term “publicly distributed” is used throughout the final rules  
23 instead of “airing,” except in the definition of “direct costs of producing or airing.”

1 3. 11 CFR 104.20(b) Who must report and when

2 New section 104.20(b) details who must report electioneering communications to the  
3 Commission and when those statements are due. The final rule states that every person who  
4 makes a disbursement or executes a contract to make a disbursement for electioneering  
5 communications that exceeds \$10,000 in direct costs must file a statement with the Commission  
6 by the end of the day following the disclosure date. The various elements of this final rule are  
7 discussed in further detail below.

8 The definitions of “electioneering communication” in 11 CFR 100.29 and “disclosure  
9 date” in 11 CFR 104.20(a)(1) must be satisfied in order for an electioneering communication  
10 reporting obligation to arise. Thus, for example, because expenditures are exempted from the  
11 definition of “electioneering communication” by 2 U.S.C 434(f)(3)(B)(ii) and 11 CFR  
12 100.29(c)(3), political committees that pay for communications with funds reportable as  
13 expenditures do not report these payments under 11 CFR 104.20(). Similarly, a “disclosure  
14 date” must have occurred, so the provisions of 11 CFR 104.20(a)(1)(i) or (ii) must have been  
15 satisfied.

16 BCRA requires that statements of electioneering communications be filed within 24-  
17 hours of the disclosure date, that is the date on which an electioneering communication is  
18 publicly distributed, assuming the \$10,000 threshold has been exceeded. 11 CFR 104.20(a)(1).  
19 One witness at the August 28, 2002 public hearing on electioneering communications  
20 acknowledged that in some cases it may be difficult to ascertain when an electioneering  
21 communication is publicly distributed for purposes of triggering the 24-hour reporting period.  
22 This is because the contract may not specify a precise time that the communication will be  
23 publicly distributed or because in some instances the broadcaster does not air the communication

1 during the block of time specified in the contract, although the day of initial broadcast will  
2 generally be known. To address the concern that a person may not know the exact time an  
3 electioneering communication is publicly distributed during the day that it is scheduled to air, the  
4 Commission is interpreting the 24-hour period in which to report the electioneering  
5 communication as starting at the end of the day in which the communication is publicly  
6 distributed. Therefore, new section 104.20(b) requires reporting of an electioneering  
7 communication by the end of the following day. The Commission did not receive any comments  
8 on this rule.

9 The last sentence of proposed section 104.20(b) stated that “[p]ersons other than political  
10 committees must file these 24-hour statements on FEC Form 9” (emphasis added). One  
11 commenter correctly noted that the highlighted language may be misleading because the  
12 Commission had stated in the Electioneering Communications Final Rules that, by operation of  
13 the expenditure and independent expenditure exemption from the definition of “electioneering  
14 communications,” political committees do not make disbursements for electioneering  
15 communications. See 67 FR at 65,197-98. Therefore, the final rule includes a sentence that  
16 makes clear that political committees report communications that are described in 11 CFR  
17 100.29(a) as expenditures or independent expenditures and not as an electioneering  
18 communication. For those persons who are required to report electioneering communications,  
19 new section 104.20(b) requires all the information specified in new section 104.20(c) be reported  
20 on FEC Form 9.

21 4. 11 CFR 104.20(c) Contents of statements

22 New section 104.20(c) lists eight items that must be included in the statements of  
23 electioneering communications that must be filed with the Commission. No commenters

1 addressed the introductory part of paragraph (c). The final rule slightly rewords the proposed  
2 rule to clarify that the information to be reported on FEC Form 9 pertains to electioneering  
3 communications.

4 A. 11 CFR 104.20(c)(1) Identification of the person making the disbursements

5 New section 104.20(c)(1) requires identification of the persons who make a  
6 disbursement, or execute a contract to make a disbursement, for an electioneering  
7 communication. Under 11 CFR 100.12, as incorporated by new section 104.20(a)(4),  
8 “identification” means an individual’s first name, middle name or initial, if available, and last  
9 name; mailing address; occupation; and the name of his or her employer; and, if the person is not  
10 an individual, the person's full name and address. New section 104.20(c)(1) additionally requires  
11 a person that is not an individual to list its principal place of business. This rule implements the  
12 requirements in BCRA at 2 U.S.C. 434(f)(2)(A) and (B). The Commission did not receive any  
13 comments concerning this paragraph.

14 B. 11 CFR 104.20(c)(2) Identification of persons sharing or exercising direction or  
15 control

16 As mandated by BCRA at 2 U.S.C. 434(f)(2)(A), new section 104.20(c)(2) requires  
17 identification of persons sharing or exercising direction or control over persons described in  
18 paragraph (c)(1), disclosing the same type of information. While one commenter addressed the  
19 definition of “sharing or exercising direction or control,” see above, no commenter specifically  
20 discussed this rule.

21 C. 11 CFR 104.20(c)(3) Identification of the custodian of the books and accounts

22 BCRA at 2 U.S.C. 434(f)(2)(A) requires disclosure of the person who is the custodian of  
23 the books and accounts from which electioneering communication disbursements are made.

1 New section 104.20(c)(3) implements this new provision. The information that must be  
2 disclosed about that person under BCRA and the new rules is the same as the information that  
3 must be disclosed about the persons described in paragraphs (c)(1) and (c)(2), except for  
4 paragraph (c)(1)'s requirement that a person that is not an individual state its principal place of  
5 business. The Commission did not receive any comments on this rule.

6 D. 11 CFR 104.20(c)(4) Disclosure of the amount of each disbursement

7 BCRA also requires disclosure of disbursements of more than \$200 during the period  
8 covered by the statement, the date the disbursement was made, and the identification of the  
9 person who receives the disbursement. 2 U.S.C. 434(f)(2)(C). The final rule in new section  
10 104.20(c)(4) follows the wording of the proposed rule without change in implementing this  
11 BCRA provision. No commenter discussed this provision in the proposed rules.

12 E. 11 CFR 104.20(c)(5) Disclosure of candidates and elections

13 Under 2 U.S.C. 434(f)(2)(D), the elections to which electioneering communications  
14 pertain, as well as the names of all clearly identified candidates referred to in the electioneering  
15 communications, must be disclosed. The Electioneering Communications NPRM provided two  
16 alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5-A and Alternative 5-B,  
17 which would have implemented this statutory provision. 67 FR 51,146. Both alternatives would  
18 have required disclosure of the elections and all clearly identified candidates who are referred to  
19 in the electioneering communication, but would have contained different wording. Commenters  
20 preferred the wording of Alternative 5-B because it was easier to read and was more consistent  
21 with 2 U.S.C. 434(f)(2)(D). Because Alternative 5-B arguably was more consistent with the  
22 definition of "disclosure date," see above, leaving no doubt as to which clearly identified  
23 candidates appear in a electioneering communication, proposed section 104.20(c)(5) in the

1 Reporting NPRM incorporated the wording of Alternative 5-B. As such, the final rule remains  
2 unchanged from the proposed rule. No comments were received in response to the Reporting  
3 NPRM concerning proposed section 104.20(c)(5).

4 F. 11 CFR 104.20(c)(6) Disclosure date

5 New section 104.20(c)(6) requires that electioneering communications statements list  
6 the disclosure date, as defined in section 104.20(a)(1), of each electioneering communication.  
7 While BCRA does not specifically require the disclosure date to be reported, this information is  
8 necessary as it is the triggering mechanism for filing the statement. This is similar to requiring  
9 the disclosure of the date an independent expenditure aggregating \$1,000 or more is made  
10 during the 24-hour reporting period. The Commission did not receive any comments on this  
11 requirement.

12 G. 11 CFR 104.20(c)(7) Disclosure of donors to a segregated bank account

13 BCRA requires persons who make disbursements for electioneering communications  
14 exclusively from segregated bank accounts to disclose the names and addresses of contributors  
15 who contribute an aggregate of \$1,000 or more to that segregated account. 2 U.S.C.  
16 434(f)(2)(E). In the Electioneering Communications NPRM, the Commission sought comment  
17 on whether amounts given to persons who make disbursements for electioneering  
18 communications are contributions subject to the limitations, prohibitions, and reporting  
19 requirements of the Act. In the new reporting provisions for electioneering communications in  
20 BCRA, the statute uses the terms “contributor” and “contributed,” but it does not use the term  
21 “contribution.” 2 U.S.C. 434(f)(2)(E) and (F). BCRA uses the more general “disbursement”  
22 more frequently. 2 U.S.C. 434(f)(2)(A), (B), (C), (E), and (F). Nor does BCRA amend the  
23 definition of “contribution.” See 2 U.S.C. 431(8). Additionally, the Commission concluded that

1 political committees do not make disbursements for electioneering communications by operation  
2 of the expenditure and independent expenditure exemptions. Based on this analysis, the  
3 Commission proposed to treat funds given to persons who make electioneering communications  
4 as “donations.” See also Reporting NPRM, 67 FR at 64,560-61. One commenter agreed with  
5 the Commission’s approach and none opposed it. At this point, the Commission concludes that  
6 its analysis of the statutory wording is correct. Accordingly, the final rules treat these funds as  
7 “donations” and not as “contributions.”

8 In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the  
9 Commission stated in the Electioneering Communications NPRM that the disclosure  
10 requirements for segregated bank accounts appear to apply only to qualified nonprofit  
11 corporations (QNCs) organized under 26 U.S.C. 501(c)(4). See 67 FR at 51,143 and  
12 11 CFR 114.10. Therefore, proposed 11 CFR 104.19(b)(6) would have permitted only QNCs to  
13 use segregated bank accounts to limit disclosure of their donors to only those who donate \$1000  
14 or more to that account. Commenters on the Electioneering Communications NPRM urged that  
15 this option be made available to all persons who make electioneering communications, and not  
16 just QNCs. Because the Commission agreed with this suggestion, proposed 104.20(c)(7) in the  
17 Reporting NPRM made this option available to all persons.

18 The Commission continues to agree with this approach. Accordingly, new section  
19 104.20(c)(7) in the final rules allows all persons who establish a separate bank account  
20 consisting of funds provided solely by individuals who are United States citizens, nationals, or  
21 permanent residents to limit their reporting of the identities of their donors of \$1,000 or more to  
22 those donors who have given directly to that bank account, as long as only funds from the  
23 separate bank account are used to pay for electioneering communications. Please note that the

1 final rules at 11 CFR 114.14(d)(2), as published previously in the Electioneering  
2 Communications Final Rules, provide such persons that are not QNCs with the option of  
3 establishing a segregated bank account similar to that allowed to QNCs. 67 FR 65,212.

4 Although no commenter addressed this provision specifically, one joint comment  
5 questioned the requirement that QNCs disclose their donors. The joint commenter made  
6 constitutional arguments and cited FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986)  
7 ("MCFL") and other cases in support of the assertions that disclosure of its donors imposes a  
8 burden on its free speech rights. They also stated that the segregated bank account option creates  
9 an administrative burden and would still require disclosure of some of their donors. The joint  
10 comment suggested that, with regard to QNCs, the Commission impose the same requirements  
11 for disclosure of electioneering communication as it does for independent expenditures arguing  
12 that legislative history indicates that Congress intended them to be treated similarly.

13 In some respects, the reporting rules applicable to QNCs' electioneering communications  
14 require less disclosure than those applicable to QNCs' independent expenditures. Electioneering  
15 communication rules require disclosure of donors of \$1,000 or more, while independent  
16 expenditure rules require disclosure of contributors of more than \$200. Compare new 11 CFR  
17 104.20(c)(7) or (8) with new 11 CFR 109.10(e)(1)(vi). Additionally, electioneering  
18 communications are not subject to disclosure until disbursements related to them exceed  
19 \$10,000, and the similar threshold for independent expenditures is \$250. See 11 CFR  
20 104.20(a)(1). While reporting of independent expenditure contributors is limited to those who  
21 contributed specifically for independent expenditures, 11 CFR 109.10(e)(1)(vi), QNCs can also  
22 reduce their reporting obligations by using separate bank accounts pursuant to 11 CFR  
23 104.20(c)(7).

1 More generally, a commenter on the Electioneering Communications NPRM and the  
2 joint comment on the Reporting NPRM argued that the members of the organizations they  
3 represent could be subject to negative consequences if their names are disclosed in connection  
4 with an electioneering communication. The FECA provides for an advisory opinion process  
5 concerning the application of any of the statutes within the Commission's jurisdiction or any  
6 regulations promulgated by the Commission, and such groups could also seek an advisory  
7 opinion from the Commission to determine if the groups would be entitled to an exemption from  
8 disclosure that would be analogous to the exemption provided to the Socialist Workers Party.  
9 See Advisory Opinions 1990-13 and 1996-46 (both of which allowed the Socialist Workers Party  
10 to withhold the identities of its contributors and persons to whom it had disbursed funds because  
11 of a reasonable probability that the compelled disclosure of the party's contributors' names would  
12 subject them to threats, harassment, or reprisals from either Government officials or private  
13 parties). BCRA's legislative history shows that some in Congress recognized the need for  
14 limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002)  
15 (remarks of Sen. Snowe). The Commission disagrees with the joint commenters' assertion that  
16 the standard for obtaining a waiver is too high, given the significant disclosure interests Congress  
17 sought to protect in the political arena.

18 Nevertheless, MCFL status does not exempt a corporation from the independent  
19 expenditure reporting requirements. It only exempts the MCFL corporation's use of its own  
20 funds from the prohibitions of 2 U.S.C. 441b. The Supreme Court in MCFL specifically noted  
21 the reporting requirements of 2 U.S.C. 434(c) and stated that "these reporting obligations provide  
22 precisely the information necessary to monitor MCFL's independent spending activity and its  
23 receipt of contributions." MCFL, 479 U.S. at 262. Thus, the Commission's extension of the

1 exemption of MCFL does not apply to reporting requirements for electioneering  
2 communications. Therefore, the Commission declines to create separate electioneering  
3 communication reporting requirements for QNCs.

4 H. 11 CFR 104.20(c)(8) Disclosure of donors when not using a segregated bank  
5 account

6 The Electioneering Communications NPRM explaining proposed section 104.19(b)(7)  
7 clearly stated that all persons who make electioneering communications, including QNCs that do  
8 not use segregated bank accounts, would be required to disclose their contributors who  
9 contribute an aggregate of \$1,000 or more during the prescribed time period. 67 FR 51,143.  
10 Nevertheless, some commenters interpreted proposed section 104.19(b)(7) to apply only to  
11 QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that  
12 BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs.  
13 Consequently, they recommended that all persons who make electioneering communications  
14 should be required to disclose their contributors under proposed section 104.19(b)(7).  
15 Additionally, some commenters expressed concern as to the requirement that organizations  
16 would be required to disclose their donors because donors may become inhibited from making  
17 donations aggregating \$1,000 or more.

18 In order to eliminate the confusion, proposed 11 CFR 104.20(c)(8) in the Reporting  
19 NPRM differed from proposed section 104.19(b)(7) in the Electioneering Communications  
20 NPRM in that it removed the reference to QNCs. Thus, proposed section 104.20(c)(8) sought to  
21 clarify that all persons who make electioneering communications would be required to disclose  
22 their donors who donate \$1,000 or more in the aggregate during the prescribed period, if they do  
23 not use segregated bank accounts. Other than the commenters that objected to disclosure of their

1 donors, discussed above, the Commission did not receive any comments on this requirement.  
2 Because BCRA at 2 U.S.C. 434(f)(2)(F) specifically mandates disclosure of this information, the  
3 final rule at 11 CFR 104.20(c)(8) is identical to the proposed rule in the Reporting NPRM.

4 I. Disclosure requirements for individuals who make electioneering  
5 communications

6 The Commission also sought comments on how the proposed rules would apply to  
7 individuals making electioneering communications. The Commission did not receive any  
8 comments on this topic. The Commission concludes that, in instances where an individual  
9 makes a disbursement for an electioneering communication, 11 CFR 104.20(c)(1) requires  
10 disclosure of the identification of the individual, which means his or her name, address,  
11 occupation, and employer.

12 New 11 CFR 104.20(c)(2) requires the identification of any person sharing or exercising  
13 direction or control over the activities of the person who made the disbursement, or who  
14 executed a contract to make a disbursement, which implements 2 U.S.C. 434(f)(2)(A). The term  
15 “direction or control” in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making  
16 process of an organization, as the Commission has noted. See Explanation and Justification for  
17 11 CFR 104.20(c)(2), above, and Reporting NPRM, 67 FR at 64,560. Therefore, the  
18 Commission defines “sharing or exercising direction or control” in new 11 CFR 104.20(a)(3)  
19 with a four-part test applicable only to organizations and entities. Individuals are required to  
20 disclose any person sharing or exercising direction or control over their electioneering  
21 communication activities.

22 For purposes of new 11 CFR 104.20(c)(7) and (8), individuals are required to disclose  
23 donations received, which does not include salary, wages, or other compensation for

1 employment. Donations required to be disclosed do include, however, gifts of \$1,000 or more  
2 from any source. The remainder of 11 CFR 104.20(c) applies to individuals in the same manner  
3 it applies to any other persons making electioneering communications. See 11 CFR 104.20(c)(3)  
4 through (6).

5 8. 11 CFR 104.20(d) Recordkeeping requirement

6 The final rules at 11 CFR 104.20(d) require all persons who make electioneering  
7 communications or accept donations for the purpose of making electioneering communications  
8 to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications  
9 NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping  
10 requirements. The commenters who addressed this issue were split on whether QNCs should be  
11 exempted from the recordkeeping requirements. A commenter who did not support the  
12 exemption argued that because these entities are required to report their electioneering  
13 communications, they should also be required to maintain records that relate to the electioneering  
14 communications to support their reports.

15 In determining that all of the reporting and recordkeeping requirements for political  
16 committees were too burdensome for QNCs making independent expenditures, the Supreme  
17 Court in MCFL noted that MCFL, Inc. was subject to more “extensive requirements and more  
18 stringent restrictions” than unincorporated nonprofit organizations. 479 U.S. at 254-255. For  
19 this reason, proposed section 104.20(d) in the Reporting NPRM required QNCs to maintain only  
20 those records that pertain to their electioneering communications, which is a much reduced  
21 obligation. Additionally, this recordkeeping requirement is identical to what is required of any  
22 other person, including unincorporated nonprofit organizations, that make disbursements for  
23 electioneering communications. Furthermore, the availability of these records is necessary to

1 assess the accuracy of the electioneering communications reports filed by QNCs. Thus,  
2 proposed paragraph (d) in the Reporting NPRM did not include an exemption for QNCs. No  
3 subsequent comments were received concerning this paragraph. After consideration of the  
4 reasons stated above and in the NPRM, the Commission has concluded that a QNC exemption  
5 from recordkeeping is unwarranted. Therefore, new section 104.20(d) requires all persons,  
6 including QNCs, who make or accept donations for electioneering communications to maintain  
7 records in accordance with 11 CFR 104.14.

8 9. 11 CFR 104.20(e) State waivers

9 Paragraph (e), which was not included in the NPRM, repeats the information in 11 CFR  
10 104.20(b) that the place of filing for statements of electioneering communications is the  
11 Commission. This paragraph also states that like all other reports or statements, copies of the  
12 statement filed with the Commission must also be filed with the appropriate State official unless  
13 the state has obtained a waiver under 11 CFR 108.1(b). The NPRM sought comment on whether  
14 this waiver should apply to statements of electioneering communications. The Commission  
15 received no comments on this issue. Because section 108.1 of 11 CFR applies to all reports and  
16 statements filed with the Commission (and when appropriate the Secretary of the Senate),  
17 statements of electioneering communications clearly fall within its rubric. See discussion of 11  
18 CFR 108.1, below.

19 **11 CFR 105.2 Place of filing; Senate candidates, their principal campaign committees, and**  
20 **committees supporting only Senate candidates (2 U.S.C. 434(g)(3))**

21 The Commission's pre-BCRA regulations required that 24-hour reports of independent  
22 expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate.

1 See pre-BCRA 11 CFR 104.4(c)(2), 105.2, and 109.2(b). Revisions to 11 CFR 105.2 place the  
2 text of pre-BCRA 11 CFR 105.2 in paragraph (a), and add the heading, “General Rule.”

3 New paragraph (b) of 11 CFR 105.2, headed, “Exceptions,” implements exceptions to  
4 this general rule created by BCRA. BCRA establishes the Commission as the place of filing for  
5 both 24-hour and 48-hour reports of independent expenditures, regardless of the office sought by  
6 the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). In the Reporting NPRM, the proposed  
7 revisions to section 105.2 would have made the Commission the point of filing for all 24-hour  
8 and 48-hour reports of independent expenditures. The Commission received no comments on  
9 this section, and the final rules follow the proposed rules regarding independent expenditures.

10 Similarly, BCRA establishes the Commission as the place of filing for electioneering  
11 communication statements, regardless of the office sought by the clearly identified candidate.  
12 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed revisions to section  
13 105.2 would have made the Commission the point of filing for all electioneering communication  
14 statements. 67 FR at 51,146. However, the Reporting NPRM proposed that 11 CFR 105.2(b)  
15 would not mention electioneering communication statements because section 105.2 only  
16 discusses reporting by political committees. 67 FR at 64,562. By operation of  
17 2 U.S.C. 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), communications paid for with expenditures  
18 and independent expenditures are excluded from the definition of “electioneering  
19 communications.” Therefore, revised section 105.2(b), as proposed in the Reporting NPRM and  
20 as promulgated in these final rules, does not mention statements of electioneering  
21 communications. Nonetheless, electioneering communications by others may refer to Senatorial  
22 candidates. Under 11 CFR 104.20(b), electioneering communication statements related to

1 electioneering communications that refer to a clearly identified candidate for Senate must be  
2 filed with the Commission, not the Secretary of the Senate.

### 3 **11 CFR 108.1 Filing requirements**

4 Paragraph (a) of 11 CFR 108.1 contains the general rule that a copy of each report and  
5 statement that is required to be filed with the Commission or the Secretary of the Senate must be  
6 filed with the Secretary of State for the appropriate State. The Commission is not making any  
7 changes to this general rule.

8 The rules at 11 CFR 108.1(b) provide an exception to the requirement that reporting  
9 entities must file copies of their reports with the Secretary of State for the appropriate State. This  
10 exception is allowed in States that have received a waiver from the Commission because the  
11 State can electronically receive and duplicate reports and statements filed with the Commission.  
12 The reporting requirements for both independent expenditures and electioneering  
13 communications specifically explain that if a State has obtained a waiver under 11 CFR 108.1(b),  
14 then reporting entities are not required to file reports or statements with the Secretary of State for  
15 that State. See 11 CFR 104.4(e)(4) and 104.20(e). In the NPRM, the Commission proposed  
16 adding to paragraph (b) a statement that the list of States that have obtained waivers under this  
17 section is available on the Commission's website. The Commission received no comments on  
18 this proposal, and the final rule follows the proposed rule.

### 19 **11 CFR 109.2 [Reserved]**

20 Section 109.2 of 11 CFR is removed and reserved for future use.

### 21 **11 CFR 109.10 Independent expenditure by persons other than political committees**

22 The NPRM proposed to move the reporting requirements for persons other than political  
23 committees who make independent expenditures from pre-BCRA 11 CFR 109.2 to new 11 CFR

1 109.10. Other proposed revisions to this section generally followed the proposals regarding  
2 independent expenditure reporting by political committees, which are discussed above in the  
3 Explanation and Justification for 11 CFR 104.4. The Commission received no comments on this  
4 section. The final rules generally follow the proposed rules except as explained below.

5 Under new section 109.10, persons other than political committees must report their  
6 independent expenditures on either FEC Form 5 or in a signed statement containing certain  
7 information regarding the person who made the independent expenditure and the nature of the  
8 independent expenditure itself.

9 Paragraph (a) of new 11 CFR 109.10 states that political committees must report  
10 independent expenditures under 11 CFR 104.4.

11 Section 109.10(b) contains the general reporting requirement for persons other than  
12 political committees previously found in 11 CFR 109.2(a). New paragraph (b) states that  
13 persons other than political committees must report independent expenditures in excess of \$250  
14 in a calendar year. New paragraph (b) specifically states that these reports must be filed in  
15 accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii).

16 Paragraph (b) has been revised since the NPRM to establish that reporting entities must follow  
17 the quarterly reporting schedule.

18 Paragraph (c) addresses reports of independent expenditures aggregating \$10,000 or more  
19 with respect to a given election from the beginning of the calendar year up to and including the  
20 20<sup>th</sup> day before an election. This paragraph requires that 48-hour reports of independent  
21 expenditures be received rather than filed by 11:59 pm on the second day after the date on which  
22 the \$10,000 threshold is reached.

1 Revisions to paragraph (d) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR  
2 109.2(b)) also follow the changes in 11 CFR 104.4(c) regarding 24-hour reports of independent  
3 expenditures aggregating \$1,000 or more after the 20<sup>th</sup> day before the election.

4 Paragraph (e) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(a)(1) and (c))  
5 addresses the contents and verification of statements and reports filed under this section.

6 Paragraph (e) has been clarified so that the information required to be disclosed applies to those  
7 using FEC Form 5 or a verified statement. Paragraph (e) includes one significant change from  
8 pre-BCRA section 109.2(a)(1) and (c): a person making an independent expenditure is now  
9 required to certify that the expenditure was made independently from a political party committee  
10 and its agents, in addition to pre-BCRA requirement of certification that the expenditure was not  
11 coordinated with a candidate, a candidate's authorized committee, or an agent of either of the  
12 foregoing. This change reflects the addition of political party committees to the definition of  
13 "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C.  
14 441a(a)(7)(B)(ii) under BCRA.

15 In BCRA, Congress deleted the term "consultation" from the list of activities that  
16 compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Notwithstanding that  
17 change, in the Reporting NPRM the Commission proposed the retention of the term  
18 "consultation" because it remains, post-BCRA, in other related provisions of the Act. Reporting  
19 NPRM, 67 FR at 64,558 and 64,568. For the same reasons explained with reference to the  
20 definition of "independent expenditure" in 11 CFR 100.16, see Coordinated and Independent  
21 Expenditures, NPRM, 67 FR 60,042, 60,061 (Sept. 24, 2002); Coordinated and Independent  
22 Expenditures, Final Rules, 67 FR (forthcoming Dec. 2002), the Commission is continuing to  
23 include "consultation" in the description of activity that would cause an expenditure to lose its

1 independence (i.e., “in cooperation, consultation, or concert with” a candidate or political party  
2 committee), even though the statutory definition in 2 U.S.C. 431(17) does not retain the term.

3 The comment from the Internal Revenue Service, which is described in the Explanation  
4 and Justification of 11 CFR 104.4, above, will be of interest to political organizations within the  
5 meaning of section 527 of the Internal Revenue Code.

6

7 **Certification of no effect pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

8 The Commission certifies that the attached final rules do not have a significant  
9 economic impact on a substantial number of small entities. The bases of this certification are  
10 several. There are four areas in which new rules are being promulgated. The economic impact  
11 on small entities of each new rule is addressed below.

12 **1. Independent expenditure reporting**

13 First, with regard to the final rules addressing independent expenditures, the national,  
14 State, and local party committees of the two major political parties, and other political  
15 committees, are not small entities under 5 U.S.C. 601 because they are not small businesses,  
16 small organizations, or small governmental jurisdictions. Further, individuals operating under  
17 these rules are not small entities.

18 The small entities to which the rules do apply will not be unduly burdened by the final  
19 rules because there is no significant extra cost involved, as independent expenditures must  
20 already be reported. Collectively, the differential costs will not exceed \$100 million per year. In  
21 addition, new reporting requirements will not significantly increase costs, as they only apply to  
22 those spending \$10,000 or more on independent expenditures, and the actual reporting  
23 requirements are the minimum necessary to comply with the new statute enacted by Congress.

1           2. Electioneering communications

2           Second, with regard to the final rules addressing electioneering communications, the  
3 only burden the final rules impose is on persons who make electioneering communications, and  
4 that burden is a minimal one, requiring persons who make such communications to provide the  
5 names and addresses of those who made donations of \$1000 or more to that person when the  
6 costs of the electioneering communication exceed \$10,000 per year. If that person is a  
7 corporation that qualifies as a QNC, then it must also certify that it meets that status. The  
8 number of small entities affected by the final rules is not substantial.

9           In addition, the Commission is promulgating several rules that reduce any burden that  
10 might be placed on persons who must file electioneering communication reports. First, the  
11 Commission interprets the reporting requirement such that no reporting is required until after an  
12 electioneering communication is publicly distributed. More than likely, this will only require  
13 that person to file one report with the Commission. Also, the Commission is allowing all  
14 persons paying for electioneering communications to establish segregated bank accounts, and to  
15 report the names and addresses of only those persons who contributed to those accounts.  
16 Further, the Commission interprets the statute to not require that a certification of QNC status be  
17 filed until the person is also required to file a disclosure report. These are significant steps the  
18 Commission is taking to reduce the burden on those who make electioneering communications.  
19 The overall burden on the small entities affected by these final rules for reporting electioneering  
20 communications will not be \$100 million on an annual basis. Moreover, these final rules are no  
21 more than what is strictly necessary to comply with the new statute enacted by Congress.

1           3. Reporting schedules for House of Representatives and Senate candidates

2           Third, regarding the new rules requiring a new reporting schedule for non-election years  
3 for the authorized committees of House of Representatives and Senate candidates, the frequency  
4 of reports has increased. However, the additional cost will not reach \$100 million on an annual  
5 basis. Moreover, these final rules are no more than what is strictly necessary to comply with the  
6 new statute enacted by Congress.

7           4. Reporting schedules for national committees of political parties

8           Fourth, regarding the new rules requiring a different reporting schedule for national  
9 committees of political parties, as noted above, the two major national party committees are not  
10 small entities under 5 U.S.C. 601. In addition, the new reporting schedule applicable to other  
11 national party committees will not result in a cost of \$100 million per year, and is no more than  
12 what is strictly necessary to comply with the new statute enacted by Congress.

13  
14 List of Subjects

15 11 CFR Part 100

16 Elections

17 11 CFR Part 104

18 Campaign funds, Political committees and parties, Reporting and recordkeeping  
19 requirements.

20 11 CFR Part 105

21 Campaign funds, Political candidates, Political committees and parties, Reporting and  
22 recordkeeping requirements.

1 11 CFR Part 108

2 Elections, Reporting and recordkeeping requirements.

3

4 11 CFR Part 109

5 Elections, Reporting and recordkeeping requirements.

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For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

**PART 100 – SCOPE AND DEFINITIONS**

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.19 is revised as follows:

- a) Revising the introductory text and paragraphs (b) through (e).
- b) Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions read as follows.

**§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).**

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms file, filed, and filing mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

- (a) Where to deliver reports. \* \* \*
- (b) Timely filed. A document, other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election. Documents

1 sent by first class mail must be received by the close of business on the prescribed filing date to  
2 be timely filed.

3 (c) Electronically filed reports. For electronic filing purposes, a document is timely filed  
4 when it is received and validated by the Federal Election Commission by 11:59 p.m. Eastern  
5 Standard/Daylight Time on the filing date.

6 (d) 48-hour and 24-hour reports of independent expenditures.

7 (1) 48-hour reports of independent expenditures. A 48-hour report of independent  
8 expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is  
9 received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on  
10 the second day following the date on which independent expenditures aggregate  
11 \$10,000 or more in accordance with 11 CFR 104.4(f), any time during the  
12 calendar year up to and including the 20<sup>th</sup> day before an election.

13 (2) 24-hour reports of independent expenditures. A 24-hour report of independent  
14 expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is  
15 received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on  
16 the day following the date on which independent expenditures aggregate \$1,000  
17 or more, in accordance with 11 CFR 104.4(f), during the period less than 20 days  
18 but more than 24 hours before an election.

19 (3) Permissible means of filing. In addition to other permissible means of filing, a  
20 24-hour report or 48-hour report of independent expenditures may be filed using a  
21 facsimile machine or by electronic mail if the reporting entity is not required to  
22 file electronically in accordance with 11 CFR 104.18. Political committees,  
23 regardless of whether they are required to file electronically under 11 CFR

1 104.18, may file 24-hour reports using the Commission's website's on-line  
2 program.

3 (e) 48-hour statements of last-minute contributions. In addition to other permissible means  
4 of filing, authorized committees that are not required to file electronically may file 48-hour  
5 notifications of contributions using facsimile machines. All authorized committees that file with  
6 the Commission, including electronic reporting entities, may use the Commission's website's on-  
7 line program to file 48-hour notifications of contributions. See 11 CFR 104.5(f).

8 (f) 24-hour statements of electioneering communications. A 24-hour statement of  
9 electioneering communications under 11 CFR 104.20 is timely filed when it is received by the  
10 Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure  
11 date. (See 11 CFR 104.20(a)(1) and (b)). In addition to other permissible means of filing, a 24-  
12 hour statement of electioneering communications may be filed using a facsimile machine or by  
13 electronic mail if the reporting entity is not required to file electronically in accordance with 11  
14 CFR 104.18.

15  
16 **PART 104 -- REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

17 3. The authority citation for part 104 continues to read as follows:

18 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

19 4. In §104.3, paragraph (g) is revised to read as follows:

20 **§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).**

21 \* \* \* \* \*

1 (g) Building funds.

2 (1) A political party committee must report gifts, subscriptions, loans, advances,  
3 deposits of money, or anything of value that are used by the political party  
4 committee's Federal accounts to defray the costs of construction or purchase of  
5 the committee's office building. See 11 CFR 300.35. Such a receipt is a  
6 contribution subject to the limitations and prohibitions of the Act and reportable  
7 as a contribution, regardless of whether the contributor has designated the funds  
8 or things of value for such purpose and regardless of whether such funds are  
9 deposited in a separate Federal account dedicated to that purpose.

10 (2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that  
11 are donated to a non-Federal account of a State or local party committee and are  
12 used by that party committee for the purchase or construction of its office  
13 building are not contributions subject to the reporting requirements of the Act.  
14 The reporting of such funds or things of value is subject to State law.

15 (3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that  
16 are used by a national committee of a political party to defray the costs of  
17 construction or purchase of the national committee's office building are  
18 contributions subject to the requirements of paragraph (g)(1) of this section.

19  
20 \* \* \* \* \*

21 5. Section 104.4 is revised to read as follows:

22 **§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).**

23 (a) Regularly scheduled reporting. Every political committee that makes independent  
24 expenditures must report all such independent expenditures on Schedule E in accordance with 11

1 CFR 104.3(b)(3)(vii). Every person that is not a political committee must report independent  
2 expenditures in accordance with paragraphs (e) and (f) of this section and 11 CFR 109.10.

3 (b) Reports of independent expenditures made at any time up to and including the 20<sup>th</sup> day  
4 before an election.

5 (1) Independent expenditures aggregating less than \$10,000 in a calendar year.

6 Political committees must report on Schedule E of FEC Form 3X at the time of  
7 their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all  
8 independent expenditures aggregating less than \$10,000 with respect to a given  
9 election any time during the calendar year up to and including the 20<sup>th</sup> day before  
10 an election.

11 (2) Independent expenditures aggregating \$10,000 or more in a calendar year.

12 Political committees must report on Schedule E of FEC Form 3X all independent  
13 expenditures aggregating \$10,000 or more with respect to a given election any  
14 time during the calendar year up to and including the 20<sup>th</sup> day before an election.  
15 Political committees must ensure that the Commission receives these reports by  
16 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date  
17 on which a communication that constitutes an independent expenditure is publicly  
18 distributed or otherwise publicly disseminated. Each time subsequent  
19 independent expenditures relating to the same election aggregate an additional  
20 \$10,000 or more, the political committee must ensure that the Commission  
21 receives a new 48-hour report of the subsequent independent expenditures by  
22 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date  
23 on which the communication is publicly distributed or otherwise publicly

1 disseminated. (See paragraph (f) of this section for aggregation.) Each 48-hour  
2 report must contain the information required by 11 CFR 104.3(b)(3)(vii)  
3 indicating whether the independent expenditure is made in support of, or in  
4 opposition to, the candidate involved. In addition to other permissible means of  
5 filing, a political committee may file the 48-hour reports under this section by any  
6 of the means permissible under 11 CFR 100.19(d)(3).

7 (c) Reports of independent expenditures made less than 20 days, but more than 24 hours  
8 before the day of an election. Political committees must ensure that the Commission receives  
9 reports of independent expenditures aggregating \$1,000 or more with respect to a given election,  
10 after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, by 11:59  
11 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is  
12 publicly distributed or otherwise publicly disseminated. Each time subsequent independent  
13 expenditures relating to the same election aggregate an additional \$1,000 or more, the political  
14 committee must ensure that the Commission receives a new 24-hour report of the subsequent  
15 independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following  
16 the date on which a communication that constitutes an independent expenditure is publicly  
17 distributed or otherwise publicly disseminated. (See paragraph (f) of this section for  
18 aggregation.) Each 24-hour report shall contain the information required by 11 CFR  
19 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in  
20 opposition to, the candidate involved. Political committees may file reports under this section by  
21 any of the means permissible under 11 CFR 100.19(d)(3).

22 (d) Verification. Political committees must verify reports of independent expenditures filed  
23 under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2)

1 of this section. Any report verified under either of these methods shall be treated for all purposes  
2 (including penalties for perjury) in the same manner as a document verified by signature.

3 (1) For reports filed on paper (e.g., by hand-delivery, U.S. Mail or facsimile  
4 machine), the treasurer of the political committee that made the independent  
5 expenditure must certify, under penalty of perjury, the independence of the  
6 expenditure by handwritten signature immediately following the certification  
7 required by 11 CFR 104.3(b)(3)(vii).

8 (2) For reports filed by electronic mail, the treasurer of the political committee that  
9 made the independent expenditure shall certify, under penalty of perjury, the  
10 independence of the expenditure by typing the treasurer's name immediately  
11 following the certification required by 11 CFR 104.3(b)(3)(vii).

12 (e) Where to file. Reports of independent expenditures under this section and  
13 11 CFR 109.10(b) shall be filed as follows:

14 (1) For independent expenditures in support of, or in opposition to, a candidate for  
15 President or Vice President: with the Commission and the Secretary of State for  
16 the State in which the expenditure is made.

17 (2) For independent expenditures in support of, or in opposition to, a candidate for  
18 the Senate:

19 (i) For regularly scheduled reports, with the Secretary of the Senate and the  
20 Secretary of State for the State in which the candidate is seeking election;

21 or

22 (ii) For 24-hour and 48-hour reports, with the Commission and the Secretary  
23 of State for the State in which the candidate is seeking election.

1 (3) For independent expenditures in support of, or in opposition to, a candidate for  
2 the House of Representatives: with the Commission and the Secretary of State for  
3 the State in which the candidate is seeking election.

4 (4) Notwithstanding the requirements of paragraphs (e)(1), (2), and (3) of this section,  
5 political committees and other persons shall not be required to file reports of  
6 independent expenditures with the Secretary of State if that State has obtained a  
7 waiver under 11 CFR 108.1(b).

8 (f) Aggregating independent expenditures for reporting purposes. For purposes of  
9 determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs  
10 (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent  
11 expenditures must be calculated as of the first date on which a communication that constitutes an  
12 independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the  
13 date that any such communication with respect to the same election is subsequently publicly  
14 distributed or otherwise publicly disseminated. Every person must include in the aggregate total  
15 all disbursements during the calendar year for independent expenditures, and all enforceable  
16 contracts, either oral or written, obligating funds for disbursements during the calendar year for  
17 independent expenditures, where those independent expenditures are made with respect to the  
18 same election for Federal office.

19 6. In § 104.5, paragraphs (a) and (g) are revised to read as follows, and introductory text to  
20 paragraph (c), and paragraphs (c)(4) and (j) are added to read as follows:

21 **§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

22 (a) Principal campaign committee of House of Representatives or Senate candidate. Each  
23 treasurer of a principal campaign committee of a candidate for the House of Representatives or

1 for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of this section  
2 in both election years and non-election years, and must file additional reports on the dates  
3 specified in paragraph (a)(2) of this section in election years.

4 (1) Quarterly reports.

5 (i) Quarterly reports must be filed no later than the 15th day following the  
6 close of the immediately preceding calendar quarter (on April 15, July 15,  
7 and October 15), except that the report for the final calendar quarter of the  
8 year must be filed no later than January 31 of the following calendar year.

9 (ii) The report must be complete as of the last day of each calendar quarter.

10 (iii) The requirement for a quarterly report shall be waived if, under paragraph  
11 (a)(2) of this section, a pre-election report is required to be filed during the  
12 period beginning on the 5th day after the close of the calendar quarter and  
13 ending on the 15th day after the close of the calendar quarter.

14 (2) Additional reports in the election year.

15 (i) Pre-election reports.

16 (A) Pre-election reports for the primary and general election must be  
17 filed no later than 12 days before any primary or general election  
18 in which the candidate seeks election. If sent by registered or  
19 certified mail, the report must be mailed no later than the 15th day  
20 before any election.

21 (B) The pre-election report must disclose all receipts and  
22 disbursements as of the 20th day before a primary or general  
23 election.

1 (ii) Post-general election report.

2 (A) The post-general election report must be filed no later than 30 days  
3 after any general election in which the candidate seeks election.

4 (B) The post-general election report must be complete as of the 20th  
5 day after the general election.

6 \* \* \* \* \*

7 (c) Political committees that are not authorized committees of candidates. Except as  
8 provided in paragraph (c)(4) of this section, each political committee that is not the authorized  
9 committee of a candidate must file either: election year and non-election year reports in  
10 accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with  
11 paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this  
12 section may elect to change the frequency of its reporting from monthly to quarterly and semi-  
13 annually or vice versa. A political committee reporting under this paragraph (c) may change the  
14 frequency of its reporting only after notifying the Commission in writing of its intention at the  
15 time it files a required report under its current filing frequency. Such political committee will  
16 then be required to file the next required report under its new filing frequency. A political  
17 committee may change its filing frequency no more than once per calendar year.

18 \* \* \* \* \*

19 (4) Notwithstanding anything to the contrary in this paragraph, a national committee  
20 of a political party, including a national Congressional campaign committee, must  
21 report monthly in accordance with paragraph (c)(3) of this section in both election  
22 and non-election years.

23 \* \* \* \* \*

1 (g) Reports of independent expenditures.

2 (1) 48-hour reports of independent expenditures. Every person that must file a 48-  
3 hour report under 11 CFR 104.4(b) must ensure the Commission receives the  
4 report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following  
5 the date on which a communication that constitutes an independent expenditure is  
6 publicly distributed or otherwise publicly disseminated. Each time subsequent  
7 independent expenditures by that person relating to the same election as that to  
8 which the previous report relates aggregate \$10,000 or more, that person must  
9 ensure that the Commission receives a new 48-hour report of the subsequent  
10 independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the  
11 second day following the date on which the \$10,000 threshold is reached or  
12 exceeded. (See 11 CFR 104.4(f) for aggregation.)

13 (2) 24-hour reports of independent expenditures. Every person that must file a 24-  
14 hour report under 11 CFR 104.4(c) must ensure that the Commission receives the  
15 report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the  
16 date on which a communication that constitutes an independent expenditure is  
17 publicly distributed or otherwise publicly disseminated. Each time subsequent  
18 independent expenditures by that person relating to the same election as that to  
19 which the previous report relates aggregate \$1,000 or more, that person must  
20 ensure that the Commission receives a 24-hour report of the subsequent  
21 independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the  
22 day following the date on which the \$1,000 threshold is reached or exceeded.  
23 (See 11 CFR 104.4(f) for aggregation.)

1 (3) Each 24-hour or 48-hour report of independent expenditures filed under this  
2 section shall contain the information required by 11 CFR 104.3(b)(3)(vii)  
3 indicating whether the independent expenditure is made in support of, or in  
4 opposition to, the candidate involved.

5 (4) For purposes of this part and 11 CFR part 109, a communication that is mailed to  
6 its intended audience is publicly disseminated when it is relinquished to the U.S.  
7 Postal Service.

8 \* \* \* \* \*

9 (j) 24-hour statements of electioneering communications. Every person who has made a  
10 disbursement or who has executed a contract to make a disbursement for the direct costs of  
11 producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in  
12 excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59  
13 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement  
14 shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

15 **§ 104.19 [Reserved.]**

16 7. Section 104.19 is added and reserved.

17 8. Section 104.20 is added to read as follows:

18 **§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).**

19 (a) Definitions.

20 (1) Disclosure date means:

21 (i) The first date during a calendar year on which an electioneering  
22 communication is publicly distributed provided that the person making the  
23 electioneering communication has made one or more disbursements, or

1 has executed one or more contracts to make disbursements, for the direct  
2 costs of producing or airing one or more electioneering communications  
3 aggregating in excess of \$10,000; or

4 (ii) Any other date during the same calendar year on which an electioneering  
5 communication is publicly distributed provided that the person making the  
6 electioneering communication has made one or more disbursements, or  
7 has executed one or more contracts to make disbursements, for the direct  
8 costs of producing or airing one or more electioneering communications  
9 aggregating in excess of \$10,000 since the most recent disclosure date  
10 during such calendar year.

11 (2) Direct costs of producing or airing electioneering communications means the  
12 following:

- 13 (i) Production costs charged by a vendor, such as studio rental time, staff  
14 salaries, costs of video and audio recording media, and talent;
- 15 (ii) Production costs directly associated with producing the communication in-  
16 house; and
- 17 (iii) The cost of airtime on broadcast, cable and satellite radio and television  
18 stations, and the charges for a broker to purchase the airtime.

19 (3) Sharing or exercising direction or control means exercising authority or  
20 responsibility for:

- 21 (i) Development, establishment, or change of policy for the organization or  
22 corporation;
- 23 (ii) General management of the organization or corporation;

1 (iii) Obligation of funds or signing contracts; or

2 (iv) Hiring or firing persons involved in making electioneering communications.

3 (4) Identification has the same meaning as in 11 CFR 100.12.

4 (5) Publicly distributed has the same meaning as in 11 CFR 100.29(a)(5).

5 (b) Who must report and when. Every person who has made an electioneering  
6 communication, as defined in 11 CFR 100.29, aggregating in excess of \$10,000 during any  
7 calendar year shall file a statement with the Commission by 11:59 p.m. Eastern  
8 Standard/Daylight Time on the day following the disclosure date. The statement shall be filed  
9 under penalty of perjury, shall contain the information set forth in paragraph (c) of this section,  
10 and shall be filed on FEC Form 9. Political committees that make communications that are  
11 described in 11 CFR 100.29(a) must report such communications as expenditures or independent  
12 expenditures under 11 CFR 104.3 and 104.4, and not under this section.

13 (c) Contents of statement. Statements of electioneering communications filed under  
14 paragraph (b) of this section shall disclose the following information:

15 (1) The identification of the person who made the disbursement, or who executed a  
16 contract to make a disbursement, and, if the person is not an individual, the  
17 person's principal place of business;

18 (2) The identification of any person sharing or exercising direction or control over the  
19 activities of the person who made the disbursement or who executed a contract to  
20 make a disbursement;

21 (3) The identification of the custodian of the books and accounts from which the  
22 disbursements were made;

- 1           (4)    The amount of each disbursement, or amount obligated, of more than \$200 during  
2                    the period covered by the statement, the date the disbursement was made, or the  
3                    contract was executed, and the identification of the person to whom that  
4                    disbursement was made;
- 5           (5)    All clearly identified candidates referred to in the electioneering communication  
6                    and the elections in which they are candidates;
- 7           (6)    The disclosure date, as defined in paragraph (a) of this section;
- 8           (7)    If the disbursements were paid exclusively from a segregated bank account  
9                    consisting of funds provided solely by individuals who are United States citizens,  
10                   United States nationals, or who are lawfully admitted for permanent residence  
11                   under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an  
12                   amount aggregating \$1,000 or more to the segregated bank account, aggregating  
13                   since the first day of the preceding calendar year; and
- 14          (8)    If the disbursements were not paid exclusively from a segregated bank account  
15                   described in paragraph (c)(7) of this section, the name and address of each donor  
16                   who donated an amount aggregating \$1,000 or more to the person making the  
17                   disbursement, aggregating since the first day of the preceding calendar year.
- 18   (d)    Recordkeeping. All persons who make electioneering communications or who accept  
19            donations for the purpose of making electioneering communications must maintain records in  
20            accordance with 11 CFR 104.14.
- 21   (e)    State waivers. Statements of electioneering communications that must be filed with the  
22            Commission must also be filed with the Secretary of State of the appropriate State if the State  
23            has not obtained a waiver under 11 CFR 108.1(b).

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**PART 105 – DOCUMENT FILING (2 U.S.C. 432(g))**

9. The authority citation for part 105 is revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

**§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g), 434(g)(3)).**

(a) General Rule. Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) Exceptions. 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate.

**PART 108 – FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)**

11. The authority citation for part 108 would continue to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

1 12. Paragraph (b) of § 108.1 is revised to read as follows:

2 **§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1))**

3 \* \* \* \* \*

4 (b) The filing requirements and duties of State officers under this part 108 shall not apply to  
5 a State if the Commission has determined that the State maintains a system that can  
6 electronically receive and duplicate reports and statements filed with the Commission. Once a  
7 State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that  
8 can be electronically accessed and duplicated from the Commission, regardless of whether the  
9 report or statement was originally filed with the Commission. The list of States that have  
10 obtained waivers under this section is available on the Commission's website.

11  
12 **PART 109 – COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17),**  
13 **441a, Pub. L. 107-155 sec. 214(c) (March 27, 2002)).**

14 13. The authority citation for part 109 continues to read as follows:

15 Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155-107 sec. 214(c).

16 **§ 109.2 [Removed and reserved]**

17 14. Section 109.2 is removed and reserved.

18 15. Section 109.10 is added to read as follows:

19 **§ 109.10 How do political committees and other persons report independent expenditures?**

20 (a) Political committees, including political party committees, must report independent  
21 expenditures under 11 CFR 104.4.

22 (b) Every person that is not a political committee and that makes independent expenditures  
23 aggregating in excess of \$250 with respect to a given election in a calendar year shall file a

1 verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the  
2 information required by paragraph (e) of this section. Every person filing a report or statement  
3 under this section shall do so in accordance with the quarterly reporting schedule specified in  
4 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during  
5 which any such independent expenditures that aggregate in excess of \$250 are made and in any  
6 quarterly reporting period thereafter in which additional independent expenditures are made.

7 (c) Every person that is not a political committee and that makes independent expenditures  
8 aggregating \$10,000 or more with respect to a given election any time during the calendar year  
9 up to and including the 20th day before an election, must report the independent expenditures on  
10 FEC Form 5, or by signed statement if the person is not otherwise required to file electronically  
11 under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the  
12 independent expenditures aggregating \$10,000 or more must ensure that the Commission  
13 receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day  
14 following the date on which a communication is publicly distributed or otherwise publicly  
15 disseminated. Each time subsequent independent expenditures relating to the same election  
16 aggregate an additional \$10,000 or more, the person making the independent expenditures must  
17 ensure that the Commission receives a new 48-hour report of the subsequent independent  
18 expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of  
19 this section.

20 (d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the  
21 day of an election, independent expenditures aggregating \$1,000 or more with respect to a given  
22 election must report those independent expenditures and ensure that the Commission receives the  
23 report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following

1 the date on which a communication is publicly distributed or otherwise publicly disseminated.

2 Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or  
3 more, the person making the independent expenditures must ensure that the Commission  
4 receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR  
5 104.4(f) for aggregation.) Such report or statement shall contain the information required by  
6 paragraph (e) of this section.

7 (e) Content of verified reports and statements and verification of reports and statements.

8 (1) Contents of verified reports and statement. If a signed report or statement is  
9 submitted, the report or statement shall include:

10 (i) The reporting person's name, mailing address, occupation, and the name of  
11 his or her employer, if any;

12 (ii) The identification (name and mailing address) of the person to whom the  
13 expenditure was made;

14 (iii) The amount, date, and purpose of each expenditure;

15 (iv) A statement that indicates whether such expenditure was in support of, or  
16 in opposition to a candidate, together with the candidate's name and office  
17 sought;

18 (v) A verified certification under penalty of perjury as to whether such  
19 expenditure was made in cooperation, consultation, or concert with, or at  
20 the request or suggestion of a candidate, a candidate's authorized  
21 committee, or their agents, or a political party committee or its agents; and

1 (vi) The identification of each person who made a contribution in excess of  
2 \$200 to the person filing such report, which contribution was made for the  
3 purpose of furthering the reported independent expenditure.

4 (2) Verification of independent expenditure statements and reports. Every person  
5 shall verify reports and statements of independent expenditures filed pursuant to  
6 the requirements of this section by one of the methods stated in paragraph (2)(i) or  
7 (ii) of this section. Any report or statement verified under either of these methods  
8 shall be treated for all purposes (including penalties for perjury) in the same  
9 manner as a document verified by signature.

10 (i) For reports or statements filed on paper (e.g., by hand-delivery, U.S. Mail,  
11 or facsimile machine), the person who made the independent expenditure  
12 shall certify, under penalty of perjury, the independence of the expenditure  
13 by handwritten signature immediately following the certification required  
14 by paragraph (e)(1)(v) of this section.

15 (ii) For reports or statements filed by electronic mail, the person who made  
16 the independent expenditure shall certify, under penalty of perjury, the  
17 independence of the expenditure by typing the treasurer's name  
18 immediately following the certification required by paragraph (e)(1)(v) of  
19 this section.

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David. M. Mason  
Chairman  
Federal Election Commission

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3 DATED: \_\_\_\_\_

4 BILLING CODE: 6715-01-P